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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

APR 11 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matters of)	
)	
Computer III Remand Proceedings;)	CC Docket No. 90-623
Bell Operating Company Safeguards;)	
and Tier 1 Local Exchange Company)	
Safeguards)	
)	
Application of Open Network)	CC Docket No. 92-256
Architecture and Nondiscrimination)	
Safeguards to GTE Corporation)	

**COMMENTS OF
PRODIGY SERVICES COMPANY**

Prodigy Services Company ("Prodigy") hereby offers its views in response to the Commission's request for comments on the continuing validity of the rules governing Customer Proprietary Network Information ("CPNI").¹ Prodigy submits that the existing CPNI rules create an indefensible double standard governing access to and use of information from residential and small business subscribers. Accordingly, the Commission should revisit those rules and mandate fair and equal access to CPNI for all providers of competitive services whether or not affiliated with a local exchange carrier.

Prodigy is the provider of the PRODIGY® service, the most popular consumer online service in the United States. The PRODIGY service is available virtually nationwide and is used by approximately 2 million "members." Currently, the

¹ See FCC Public Notice, FCC 94-63 (March 10, 1994).

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local telephone network is the only ubiquitous, two-way electronic medium available for delivery of the PRODIGY Service.

Enhanced service providers now frequently find themselves in competition with non-regulated local telephone company offerings which commonly target the same markets. This expanding participation of local exchange carriers in competitive businesses such as online information services increases their incentives to make use of their customer's CPNI to gain a competitive advantage. Unfortunately, the FCC's existing CPNI rules permit just such conduct.

The CPNI of residential users and small businesses with 20 or fewer lines is presumptively available to the local exchange carriers unless the customer takes affirmative steps to prohibit disclosure.² Yet, single line residential users are not even required to be informed of their right to restrict access.³ In contrast, entities not affiliated with the local exchange carrier must obtain the affirmative written consent of a customer before CPNI will be released to them.

The preferential access to this valuable information that the carriers enjoy gives them a substantial advantage in

² See Computer III Remand Proceedings, 6 FCC Rcd 7571 (1991).

³ FCC Public Notice at 2.

their target marketing efforts. Target marketing refers to the practice of identifying individuals (or businesses) most likely to want a service or product and contacting those individuals directly, either by mail addressed to the individual or by a phone call. It is a common and economically efficient business practice. Consumers increasingly object, however, to target marketing practices. An unauthorized commercial use of their name beyond the original purpose or disclosure to someone else is viewed by many as a violation of an expectation of privacy -- the right to control use or disclosure of even the most basic information, their names and addresses.⁴

Prodigy believes that the use of CPNI by a local exchange carrier for target marketing raises more concerns -- both for competitors and for telephone subscribers⁵ -- than similar practices by other businesses. At the simplest level, telephone company targeting of new subscribers to

⁴ See Deborah L. Jacobs, "They've Got Your Name. You've Got Their Junk." N.Y. Times, March 13, 1994.

⁵ Telephone subscribers have virtually no direct control over the use or disclosure of CPNI, particularly by the local exchange provider. They cannot yet turn to alternative providers because local phone service is largely a monopoly, particularly for residential and small business consumers, and is likely to remain so for the foreseeable future. Nor can telephone subscribers who value privacy very highly easily decide to forego service on privacy grounds. Telephone service is virtually a necessity of modern life. In contrast to users of information services, telephone subscribers must rely on regulatory protections of their privacy expectations.

telephone service to sell them non-telephone products is a significant breach of privacy expectations. It violates a telephone subscriber's reasonable expectation that personal information disclosed to order local telephone service, a basic utility available from only one provider, will not subject that subscriber to directed marketing efforts by the phone company for something else. An unsolicited sales call -- which is the telephone equivalent of junk mail -- or a marketing pitch made on a customer-initiated call that is unrelated to the customer's business purpose, are unquestionably intrusive and to some unacceptable.

Use of CPNI becomes a significant matter of competitive equity for competitors in markets for services other than telephone service. Consumers who use enhanced services such as online information services, voice messaging services, or alarm monitoring services, must reach those services over the local telephone network. At such time as the local exchange company offers its own enhanced services, access to CPNI permits marketing and sales personnel of the local exchange carrier effectively to screen a large number of prospective customers to identify and target the most likely users.

This virtually exclusive ability to use CPNI gives the local exchange provider a significant competitive advantage. Competing providers may not be able to construct an equivalent database or, if they can, must spend considerable time

and money doing so. The advantages in time and cost savings enjoyed by the local exchange company are not the results of its merits as a competitor in the enhanced service market, but arise solely from its virtually exclusive position as the provider of local phone services. And indeed, if target marketing includes an effort to convert existing members from one enhanced service provider to another, rather than to identify and cultivate new users, it will do little to promote the growth of the Information Age and cannot be justified on economic or policy grounds.

Another dimension to the inequities created by the current CPNI rules is the substantial cross-subsidy that flows from ratepayers to telephone company shareholders as a result of the carriers' preferential access to this valuable information. CPNI is information about ratepayers collected at their expense. To the extent CPNI is made available solely to a telephone company's competitive operations, its value will be transferred to the pockets of shareholders in the form of dividends rather than to the ratepaying public through the wider availability of diverse information services. Such a windfall to the owners of a monopoly government franchise simply cannot be considered sound public policy.

Thus, it is not surprising that the FCC's prior attempted justifications for this disparate treatment are

unconvincing.⁶ Concerns about smaller customers' access to "one stop shopping" can easily be remedied by a customer's decision to release his or her CPNI upon the request of information service personnel, whether or not affiliated with the exchange carrier. The value of CPNI for promoting the "Information Age" will actually be increased if such information is made more widely and equally available so that the entire public will benefit from a wide variety of information services. It follows that full equality in access to and ability to make use of CPNI -- where access is not restricted for legitimate privacy reasons -- will best promote the Commission's pro-competitive and pro-consumer goals.


In this context, it is critically important that access be truly equal, both in terms of the ability to make use of CPNI and the opportunity to solicit consents for access where necessary. In particular, local exchange carriers should not be permitted to leverage their monopoly position -- and resulting knowledge about telephone subscribers as they call in to order new or additional services -- to make the first sales pitch for competitive online services to those subscribers, unless equivalent opportunities are made available to unaffiliated information providers.

⁶ Cf. Computer III Remand Proceedings, supra; Public Notice at 2.

For the foregoing reasons, Prodigy urges the Commission to amend its current CPNI rules to provide for equivalent access, in terms of timing, terms, conditions, and cost (if any), to all CPNI for all enhanced service providers, whether or not affiliated with a local exchange carrier, consistent with privacy concerns.

Respectfully submitted,
PRODIGY SERVICES COMPANY

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April 11, 1994

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of April, 1994, I caused copies of the foregoing "Comments of Prodigy Services Company" to be mailed via first-class postage prepaid mail to the following:

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